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Rules, Statutes, and Policy Statements

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Introduction

These Policy Statements are a memorialization of the practices, policies, and procedures adopted by the Board of Law Examiners. Each Policy Statement is numbered to correspond with the rule or statute it implements.

These Policy Statements do not constitute legal advice and are not officially sanctioned by the Michigan Supreme Court. They implement the Rules of the Board of Law Examiners, statutory mandates, and the practices, policies, and procedures of the Board of Law Examiners. They do not confer any procedural or substantive due process rights and are subject to change at any time without notice.

Rule 1. General Requirements

An applicant for admission to the practice of law must

- (A) be 18 years old or older;
- (B) possess good moral character; and
- (C) have completed, before entering law school, at least 60 semester hours or 90 quarter hours toward an undergraduate degree from an accredited school or while attending an accredited junior or community college.

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1(B)-1. *Good Moral Character*

An applicant for admission to the practice of law must be of good moral character. This requirement is contained in the Board's rules and MCL 600.934, which refers to MCL 338.41. That statute defines "good moral character" as the propensity on the part of the person to serve the public in a fair, honest, and open manner.

1(B)-2. In determining whether an applicant has the propensity to serve the public in a fair, honest and open manner, the Board will consider whether the applicant meets the following essential eligibility requirements:

- (a) The ability to be honest and candid with clients, lawyers, courts, regulatory authorities and others;
- (b) The ability to reason logically, recall complex factual information and accurately analyze legal problems;
- (c) The ability to communicate with clients, lawyers, courts and others with a high degree of organization and clarity;
- (d) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (e) The ability to conduct oneself with respect for and in accordance with the law;
- (f) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (g) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;
- (h) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts and others;
- (i) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients

and others;

(j) The ability to comply with deadlines and time constraints; and

(k) The cognitive capacity to undertake fundamental lawyering skills such as problem solving, legal analysis and reasoning, legal research, organization and management of legal work, making appropriate reasoned legal judgments, and recognizing and solving ethical dilemmas.

1(B)-3. In determining whether an applicant has met the criteria set forth in 1(B)-2, the Board will look to the following circumstances of an applicant's background:

(a) Unlawful conduct;

(b) Academic misconduct;

(c) Misconduct in employment;

(d) Acts involving dishonesty, fraud, deceit, or misrepresentation;

(e) Acts which demonstrate disregard for the rights or welfare of others;

(f) Abuse of legal process, including the filing of vexatious or frivolous lawsuits;

(g) Neglect of financial responsibilities;

(h) Neglect of professional or personal obligations;

(i) Violation of a court order, including a child support order;

(j) Conduct that evidences current mental or emotional instability that may impair the ability to practice law;

(k) Conduct that evidences current illegal drug use or drug or alcohol dependence or abuse that may impair the ability to practice law;

(l) Denial of admission to practice law in another jurisdiction on character and fitness grounds;

(m) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(n) The making of false statements, including omissions, on applications to practice law in this state or any other jurisdiction; and

(o) The failure or inability to properly perform any legal or legal related tasks.

The above list is not exhaustive. The Board will also consider the applicant's conduct subsequent to any negative incident(s) in evaluating whether the applicant has the present character and fitness

to practice law in Michigan.

1(B)-4. *Good Moral Character—Burden of Proof*

The applicant has the burden of demonstrating good moral character by clear and convincing evidence.

Rule 2. Admission by Examination

- (A) An application must be filed by November 1 for the February examination, or March 1 for the July examination. Late applications will be accepted until December 15 for the February examination, or May 15 for the July examination. An application must be accompanied by payment of the fee. All materials filed are confidential.
- (B) Before taking the examination, an applicant must obtain a JD degree from a reputable and qualified law school that
 - (1) is incorporated in the United States, its territories, or the District of Columbia; and
 - (2) is approved by the American Bar Association to be reputable and qualified. Other schools may ask the Board to approve the school as reputable and qualified. In the event the law school has ceased operations since an applicant's graduation, the request for approval may be made by the applicant. The Board may, in its discretion, permit applicants who do not possess a JD degree from an ABA-approved law school to take the examination based upon factors including, but not limited to, relevant legal education, such as an LLM degree from a reputable and qualified law school, and experience that otherwise qualifies the applicant to take the examination.
- (C) The State Bar character and fitness committee will investigate each applicant. The applicant must disclose any criminal conviction which carries a possible penalty of incarceration in jail or prison that has not been reversed or vacated and comply with the committee's requirements and requests. The committee will report the results of its investigation to the Board. If the committee report shows that an applicant lacks the necessary character and fitness, the Board will review the application, record, and report. If the Board accepts the report, the applicant is entitled to a hearing before the Board and may use the Board's subpoena power. The Board may permit an applicant to take the examination before the character and fitness committee reports. The Board will release the applicant's grade if character and fitness committee approval is obtained.
- (D) Every applicant for admission must achieve a passing score, as determined by the Board, on the Multistate Professional Responsibility Examination.
- (E) The Board may permit an applicant entering the armed forces before the examination immediately following graduation to take an earlier examination. The applicant must have completed, before the examination, 2 1/2 years full-time or 3 1/2 years part-time study. The Board will release the applicant's grade when the school certifies the applicant's graduation.
- (F) The applicant is responsible for meeting all requirements before the examination. The Board may act on information about an applicant's character whenever the information is received.

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2(A)-1. *Filing Deadlines and Fees*

Application deadlines are strictly enforced. For first-time bar examination takers, applications must be electronically submitted by the referenced date. The fees must be paid online by credit card. All fees are nonrefundable. Applicants seeking accommodations under the Americans with Disabilities Act are held to the same deadlines for submitting those requests. The Board does not waive the examination requirement for medical or other reasons.

Re-examination applicants must send their re-examination form and fee directly to the Board of Law Examiners. The re-examination request must be postmarked at least 60 days prior to the exam. The fee must be paid by a money order, cashier's check, or certified check.

Applicants wishing to transfer from a prior examination must send in their notice of intent to transfer and fee directly to the Board of Law Examiners. The request to transfer must be postmarked at least 60 days prior to the exam. The fee must be paid by a money order, cashier's check or certified check.

2(A)-2. *Limitation on Number of Applications*

There is no limit on the number of times an applicant can sit for the examination.

2(B)(1)-1. *Legal Education*

Applicants must have a JD from a reputable and qualified law school that is incorporated in the United States, its territories, or the District of Columbia. Law schools approved by the American Bar Association are reputable and qualified. To qualify, the law school must be fully or provisionally approved on the date the applicant's degree was conferred. Applications received from individuals not meeting this requirement are returned.

2(B)(1)-2. *Law School Certification*

Applicants are required to attest to the fact they have graduated with a JD from a reputable and qualified law school. The examination results of applicants taking the exam without first having so graduated are void.

2(B)(1)-3. *Board Approval of Law Schools*

Law schools not approved by the ABA may ask the Board to approve the school as reputable and qualified. The Board is not required to undertake the approval process in response to such a request. The Board has adopted the *Standards for Approval of Law Schools* (including Interpretations, Rules of Procedure and fee structure) promulgated by the Section of Legal Education and Admissions to the Bar of the American Bar Association, unless otherwise required by context, statute, court rule or Board policy. Any school seeking approval must pay the actual expenses of the Board incurred in making the determination whether the school is reputable and qualified. This includes, but is not limited to, the salaries of the necessary and appropriate persons to conduct the inspection, prepare a report and make a recommendation to the Board.

2(B)(2). *Graduates of Non-Approved Law Schools*

The Board may in its discretion permit applicants who do not possess a JD from an ABA-approved law school to take the examination. In making that determination, the Board looks to, among other things, relevant legal education and experience that otherwise qualifies the applicant to take the examination. The Board considers the quality of the law school(s) attended, existing accreditation, prior accreditation history or attempts at accreditation, and evidence of experience in the full-time practice of law.

Applicants must petition the Board of Law Examiners for a waiver of the Rule. The petition may take the form of a letter. A hearing or personal interview is not held. Good cause for a waiver must be shown by clear and convincing evidence. In order for the Board to evaluate whether it should grant a waiver, the Board requires individuals seeking a waiver to provide certain material. The Board uses this information in evaluating whether the individual may take the bar examination. The following must be provided:

- a. College and law school transcripts (translated to English if necessary).
- b. A detailed description of the applicant's legal education and training. This must include a syllabus from each of the courses taken, a list of the textbooks used, the attendance requirements at the time the applicant matriculated, and the number of credit hours required for graduation.
- c. Descriptions of academic and professional records of all faculty and executive administrators of each law school attended.
- d. Copies of all material being sent to applicants by the law school and the school catalog, class schedules and course descriptions.
- e. Bar examination results, i.e., percent passed/failed, of graduates of the law school, classified by state administering the exam, for the previous three years.
- f. A statement of whether the applicant has applied to take the bar exam in any other jurisdiction and the result of that request, and the result of any bar examination taken by the applicant.
- g. A description of the applicant's work history.
- h. Evidence of experience in the full-time practice of law. Such evidence should include, but is not limited to, a sworn affidavit detailing the nature and extent of the applicant's legal work experience during the time the applicant claims to have engaged in the full-time practice of law; legal memoranda prepared by the applicant; copies of published cases resulting from pleadings and papers filed by the applicant in his or her capacity as an attorney; and/or letters of reference from the bench and bar in the jurisdiction in which the applicant has been engaged in the practice of law.
- i. In the case of applicants with a law degree from a non-U.S. jurisdiction, a description of that country's legal system, including, but not limited to, whether the English common law substantially forms the basis of that country's jurisprudence and whether English is the language of instruction and practice in the courts of that jurisdiction.
- j. A narrative statement as to why the applicant feels that good cause by clear and convincing evidence has been established.
- k. Any other documentation, material, or information the applicant feels is relevant to the establishment of good cause.
- l. The Board may request additional evidence as it deems appropriate. Material submitted to the Board is not returned to the applicant.

The Board has determined that applicants who specifically relied on the former rule, which granted eligibility to applicants with an LLM from a reputable and qualified law school, will be allowed to sit for the examination. Simply starting an LLM program before the June 30, 2004 effective date of the rule change, however, is not sufficient. If an applicant is relying on receipt of an LLM as part of the basis for granting a waiver, the degree must have already been conferred because the Board does not issue advisory opinions or rulings.

2(C)-1. *Duration of Character and Fitness Clearance*

Character and fitness clearance is valid for three years. The three-year period begins with the exam first applied for by the applicant, regardless of when clearance is obtained and whether the applicant actually sat for that examination. For example, an applicant applying for the February 2005 examination and receiving character and fitness clearance, would need to be reapproved before being allowed to sit for the February 2008 examination. Applicants not passing the examination within three years after receiving clearance must again be approved by the State Bar Standing Committee on Character and Fitness.

2(C)-2. *Character and Fitness Hearings*

Character and fitness hearings are heard de novo. They are confidential proceedings. The applicant has the burden of proving by clear and convincing evidence that he or she has the requisite character and fitness to practice law. The Michigan Rules of Evidence are considered as guidelines but are not binding. If the parties agree, the hearing can be limited to an appeal consisting of briefs and argument or a limited testimonial hearing. All evidence is taken under oath before a court reporter, although the parties may stipulate to present testimony by telephone. The applicant may be represented by counsel.

2(C)-3. *Review of Board's Decision/Reapplication*

There are no motions for rehearing or reconsideration of decisions made following character and fitness hearings. Review is by complaint for superintending control filed in the Supreme Court. Applicants denied character and fitness certification by the Board may not reapply for certification for two years after the denial. The Board may extend that period to up to five years. In that case, the Board's opinion will specify the reasons for imposition of the longer time period. The Board may impose a waiting period shorter than two years. Applicants must reapply to the Standing Committee, not the Board.

2(D). *Multistate Professional Responsibility Examination*

Beginning with the July 2009 bar examination, applicants taking the examination as first-time takers must receive a scaled score of 85 on the Multistate Professional Responsibility Examination. That score is valid indefinitely. For applicants taking the July 2009 bar examination as a re-examinee or as a transferee from a prior exam, the passing scaled score will remain at 75. If such a re-examinee or transferee fails the July 2009 examination, the passing scaled MPRE score will remain at 75.

2(E). *No Repeat Examinations without Character and Fitness and MPRE Clearance*

Applicants are allowed to take the bar examination one time only before character and fitness and MPRE clearance is received. Applicants failing the exam who do not have both clearances at the time exam scores are released receive an unofficial result only, which allows them to participate in

the appeal process. They do not receive an application for re-examination and cannot file an application for re-examination until both clearances are received.

Rule 3. Examination Subjects and Grading

(A) The examination consists of two sections:

- (1) The Multistate Bar Examination prepared by the National Conference of Bar Examiners and administered on dates and under regulations set by the Conference.
- (2) An essay examination prepared by or under the supervision of the Board or by law professors selected by the Board, on these subjects:
 - (a) Real and Personal Property
 - (b) Wills and Trusts
 - (c) Contracts
 - (d) Constitutional Law
 - (e) Criminal Law and Procedure
 - (f) Corporations, Partnerships, and Agency
 - (g) Evidence
 - (h) Creditor's Rights, including mortgages, garnishments and attachments
 - (i) Practice and Procedure, trial and appellate, state and federal
 - (j) Equity
 - (k) Torts (including no-fault)
 - (l) The sales, negotiable instruments, and secured transactions articles of the Uniform Commercial Code
 - (m) Michigan Rules of Professional Conduct
 - (n) Domestic Relations
 - (o) Conflicts of Laws
 - (p) Worker's Compensation

(B) The National Conference of Bar Examiners will grade the multistate section. The Board or its agents will grade the essay section, with the Board having final responsibility. The Board will determine a method for combining the grades and select a passing score.

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3-1. *Date of Examination*

The exam is only administered on the last Tuesday and Wednesday of February and July.

3-1 (A) *Essay Question Drafters*

The Michigan bar examination essay questions are drafted by the Board members or an attorney selected by the Board who meets the following qualifications:

- (a) Licensed to practice law in the United States, its territories, or the District of Columbia for at least 5 years;
- (b) be a member in good standing of the Bar where admitted;
- (c) is not associated with a bar review course; and
- (d) is not currently associated with a Michigan law school or the University of Toledo as a

faculty or staff member. However, an adjunct professor may write a question if it is not on a subject he or she has taught during the preceding year and will not be teaching in the upcoming semester unless otherwise approved by the Board in advance.

3-1 (B) *(Essay Question Graders)*

The Michigan bar examination essay questions are graded by the Board members or an attorney selected by the Board who meets the following qualifications:

- (a) Licensed to practice law in the United States, its territories, or the District of Columbia for at least 5 years;
- (b) be a member in good standing of the Bar where admitted;
- (d) is not associated with a bar review course; and
- (e) is not currently associated with a Michigan law school or the University of Toledo as a faculty or staff member. However, an adjunct professor may grade a question if it is not on a subject he or she has taught during the preceding year and will not be teaching in the upcoming semester unless otherwise approved by the Board in advance.

3-2. *Bar Examination Conduct*

Bar examination and related conduct of bar applicants must be beyond reproach. Applicants are at all times to maintain a professional attitude toward other applicants, proctors, and other examination personnel. Conduct that results in a violation of security or disrupts the administration of the examination may result in immediate disqualification and ejection from the examination. Such conduct includes violation of the Board's Security Policy, cheating, failing to follow all rules and instructions governing the administration of the examination, or otherwise compromising the security or integrity of the bar examination.

3-3. *Examination Security Policy*

Applicants are not permitted to bring any items into the examination room other than a clear plastic food storage type bag (maximum size one gallon), which may only contain:

- a. Admission Certificate
- b. Government issued photo I.D.
- c. Wallet
- d. Keys
- e. Earplugs (not the big earphone/headphone type)
- f. Pens, pencils, and erasers
- g. Medication and medical items
- h. Facial tissue
- i. One clear plastic bottle of water per exam session, the contents must also be clear

The following items are strictly prohibited and will not be permitted in the exam room or the testing area, which includes the examination room, rest rooms, and hallway:

- a. Coats
- b. Handbags
- c. Purses
- d. Hats, hoods, or any other headgear (except items of religious apparel)
- e. Backpacks
- f. Duffle bags
- g. Briefcases

- h. Tote bags
- i. Notes
- j. Scratch paper
- k. Books, magazines, newspapers, or any other reading material
- l. Bar review or other study material in any format or media
- m. Electronic devices, such as cell phones, calculators, pagers, cameras, radios, recording devices, hand-held computers, any type of personal digital assistant, wireless email devices, fitness trackers, etc.
- n. Watches or timepieces of any type
- o. IPODs or similar devices
- p. Headphones or headsets
- q. Imaging devices
- r. Any type of wireless communication device
- s. Weapons of any kind, regardless of whether you have a permit to carry
- t. Any other item not specifically allowed as determined by the Board

Applicants must be prepared to demonstrate that their clothing does not contain prohibited items.

Applicants are cautioned that it is best not to even bring the prohibited items to the examination site because they will not be permitted into the examination room and there will be no place to store them. The Board is not responsible for the loss or damage to personal property, so it is strongly recommended that any such items be left at home, in the applicant's hotel room, or vehicle.

Possession of a prohibited device or item at the examination will be treated as a cheating incident and the applicant may be immediately disqualified and ejected from the examination.

3-4-1. *Accommodations Under the Americans with Disabilities Act*

Accommodations are available upon a showing that the applicant has a disability or medical condition warranting such accommodations. The Board employs the Americans with Disabilities Act standard, i.e., that a person is disabled if that individual has "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. 12102. The "Applicant Request for Test Accommodations" form is available on the Board of Law Examiners website. The request must be filed not later than May 15 for the July examination and not later than December 15 for the February examination. These deadlines are strictly enforced. Upon receipt of a request for accommodations under the ADA, the Executive Director determines whether the request meets the requirements listed below. If it does not, it is returned and the applicant is given the opportunity to supplement the request. This does not operate, however, to extend any filing deadlines. In other words, it is the responsibility of the applicant to have complete materials submitted by the applicable deadline. The request for accommodations is judged on what is received by that deadline.

3-4-2. *General ADA Accommodation Request Requirements*

The following guidelines are provided to assist the applicant in documenting the need for accommodation based on an impairment that substantially limits one or more major life activities. Documentation submitted in support of a request is referred to experts in the appropriate area of disability. To support a request for test accommodations, an applicant must

submit the following:

- A. Completed Request for Test Accommodations form.
- B. A detailed, comprehensive written report describing the disability and its severity and justifying the need for the requested accommodations. The following characteristics are expected of all documentation submitted in support of a request for accommodations. The documentation must:
 - 1. State a specific diagnosis of the disability.
 - a. The diagnostic taxonomies used by the current edition of the International Statistical Classification of Diseases and Related Health Problems (ICD-10) or the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-V) are recommended.
 - 2. Be current.
 - a. As the manifestations of a disability may vary over time and in different settings, in most cases an evaluation should have been conducted within the past three years.
 - 3. Describe the specific diagnostic criteria and/or diagnostic tests used, including date(s) of evaluation, test results and a detailed interpretation of the test results.
 - a. This description should include the specific results of diagnostic procedures and tests utilized and should include relevant educational, developmental, and medical history. Where appropriate, specific test scores should be reported to support the diagnosis.
 - b. Diagnostic methods used should be appropriate to the disability and current professional practices within the field. Informal or non-standardized evaluations should be described in enough detail that other professionals could understand their role and significance in the diagnostic process.
 - 4. Describe in detail the individual's limitations due to the diagnosed disability, i.e., a demonstrated impact on functioning vis-a-vis the bar examination and explain the relationship of the test results to the identified limitations resulting from the disability.
 - a. The current functional impact on physical, perceptual and cognitive abilities should be fully described.
 - 5. Recommend specific accommodations and/or assistive devices including a detailed explanation of why these accommodations or devices are needed and how they will reduce the impact of the identified functional limitations.
 - 6. Establish the professional credentials of the evaluator that qualify him/her to make the particular diagnosis, including information about license or certification and specialization in the area of the diagnosis.
 - a. The evaluator should present evidence of comprehensive training and direct experience in the diagnosis and treatment of adults in the specific area of disability.
- C. If no prior accommodations have been provided, the qualified professional expert should include a detailed explanation as to why no accommodations were given in the past and why accommodations are needed now.

3-4-3. ADA Accommodation Request Requirements Regarding Learning Disabilities

For those seeking accommodations based on a learning disability or other cognitive disorder:

- A. The evaluation must be conducted by a qualified professional. The diagnostician must have

- comprehensive training in the field of learning disabilities and must have comprehensive training and direct experience in working with an adult population.
- B. Testing/assessment must be current. The determination of whether an individual is “significantly limited” in functioning is based on assessment of the current impact of the impairment.
 - C. Documentation must be comprehensive. Objective evidence of a substantial limitation in cognition or learning must be provided. At a minimum, the comprehensive evaluation should include the following:
 - 1. A diagnostic interview and history taking. Relevant historical information regarding the individual’s academic history and learning processes in elementary, secondary and postsecondary education should be investigated and documented. The report of assessment should include a summary of a comprehensive diagnostic interview that includes relevant background information to support the diagnosis. In addition to the candidate’s self-report, the report of assessment should include:
 - a. A description of the presenting problem(s)
 - b. A developmental history
 - c. Relevant academic history including results of prior standardized testing, reports of classroom performance and behaviors including transcripts, study habits and attitudes and notable trends in academic performance
 - d. Relevant family history, including primary language of the home and current level of fluency in English
 - e. Relevant psychosocial history
 - f. Relevant medical history including the absence of a medical basis for the present symptoms
 - g. Relevant employment history
 - h. A discussion of dual diagnosis, alternative or coexisting mood, behavioral, neurological and/or personality disorders along with any history of relevant medication and current use that may impact the individual’s learning
 - i. Exploration of possible alternatives that may mimic a learning disability when, in fact, one is not present.
 - 2. A psychoeducational or neuropsychological evaluation. The psychoeducational or neuropsychological evaluation must be submitted on the letterhead of a qualified professional and it must provide clear and specific evidence that a learning or cognitive disability does or does not exist:
 - a. The assessment must consist of a comprehensive battery of tests.
 - b. A diagnosis must be based on the aggregate of test results, history and level of current functioning. It is not acceptable to base a diagnosis on only one or two subtests. Objective evidence of a substantial limitation to learning must be presented.
 - c. Tests must be appropriately normed for the age of the patient and must be administered in the designated standardized manner.
 - 3. Minimally, the domains to be addressed should include the following:
 - a. Cognitive functioning. A complete cognitive assessment is essential with all subtests and standard scores reported. Acceptable measures include, but are not limited to: Wechsler Adult Intelligence Scale-III (WAIS-III); Woodcock Johnson Psycho Educational Battery—Revised: Tests of Cognitive Ability; Kaufman Adolescent and Adult Intelligence Test.

- b. Achievement. A comprehensive achievement battery with all subtests and standard scores is essential. The battery must include current levels of academic functioning in relevant areas such as reading (decoding and comprehension) and mathematics. Acceptable instruments include, but are not limited to, the Woodcock-Johnson Psycho Educational Battery—Revised: Tests of Achievement; The Scholastic Abilities Test for Adults (SATA); Woodcock Reading Mastery Tests—Revised.
 - i. Specific achievement tests are useful instruments when administered under standardized conditions and when interpreted within the context of other diagnostic information. The Wide Range Achievement Test-3 (WRAT-3) and the Nelson-Denny Reading Test are not comprehensive diagnostic measures of achievement and therefore neither is acceptable if used as the sole measure of achievement.
 - c. Information processing. Specific areas of information processing (e.g., short- and long-term memory, sequential memory, auditory and visual perception/processing, auditory and phonological awareness, processing speed, executive functioning, motor ability) must be assessed. Acceptable measures include, but are not limited to, the Detroit Tests of Learning Aptitude--Adult (DTLA-A), Wechsler Memory Scale-III (WMS-III), information from the Woodcock Johnson Psycho Educational Battery Revised: Tests of Cognitive Ability, as well as other relevant instruments that may be used to address these areas.
 - d. Other assessment measures. Other formal assessment measures or nonstandard measures and informal assessment procedures or observations may be integrated with the above instruments to help support a differential diagnosis or to disentangle the learning disability from co-existing neurological and/or psychiatric issues. In addition to standardized test batteries, nonstandardized measures and informal assessment procedure may be helpful in determining performance across a variety of domains.
4. Actual test scores must be provided (standard scores where available).
5. Records of academic history should be provided. Relevant records detailing learning processes and difficulties in elementary, secondary and postsecondary education should be included. Such records as grade reports, transcripts, teachers' comments and the like will serve to substantiate self-reported academic difficulties in the past and currently.
6. A differential diagnosis must be reviewed and various possible alternative causes for the identified problems in academic achievement should be ruled out. The evaluation should address key constructs underlying the concept of learning disabilities and provide clear and specific evidence of the information processing deficit(s) and how these deficits currently impair the individual's ability to learn. No single test or subtest is a sufficient basis for a diagnosis. The differential diagnosis must demonstrate that:
 - a. Significant difficulties persist in the acquisition and use of listening, speaking, reading, writing or reasoning skills.
 - b. The problems being experienced are not primarily due to lack of exposure to the behaviors needed for academic learning or to an inadequate match between the individual's ability and the instructional demands.

7. A clinical summary must be provided. A well-written diagnostic summary based on a comprehensive evaluative process is a necessary component of the report. Assessment instruments and the data they provide do not diagnose; rather, they provide important data that must be integrated with background information, historical information and current functioning. It is essential then that the evaluator integrate all information gathered in a well-developed clinical summary. The following elements must be included in the clinical summary:
 - a. Demonstration of the evaluator's having ruled out alternative explanations for the identified academic problems as a result of poor education, poor motivation and/or study skills, emotional problems, attention problems and cultural or language differences.
 - b. Indication of how patterns in cognitive ability, achievement and information processing are used to determine the presence of a learning disability.
 - c. Indication of the substantial limitation to learning presented by the learning disability and the degree to which it impacts the individual in the context of the bar exam.
 - d. Indication as to why specific accommodations are needed and how the effects of the specific disability are mediated by the recommended accommodation(s).
 - i. Problems such as test anxiety, English as a second language (in and of itself), slow reading without an identified underlying cognitive deficit or failure to achieve a desired academic outcome are not learning disabilities and therefore are not covered under the Americans with Disabilities Act.
8. Each accommodation recommended by the evaluator must include a rationale. The evaluator must describe the impact the diagnosed learning disability has on a specific major life activity as well as the degree of significance of this impact on the individual. The diagnostic report must include specific recommendations for accommodations and a detailed explanation as to why each accommodation is recommended. Recommendations must be tied to specific test results or clinical observations. The documentation should include any record of prior accommodation or auxiliary aids, including any information about specific conditions under which the accommodations were used and whether or not they were effective. However, a prior history of accommodation, without demonstration of a current need, does not in and of itself warrant the provision of a like accommodation. If no prior accommodation(s) has been provided, the qualified professional expert should include a detailed explanation as to why no accommodation(s) was used in the past and why accommodation(s) is needed at this time.

3-4-4. ADA Accommodation Request Requirements Regarding Attention Deficit/Hyperactivity Disorder (ADHD)

For those applicants seeking accommodations based on Attention Deficit/Hyperactivity Disorder (ADHD):

- A. The evaluation must be conducted by a qualified diagnostician. Professionals conducting assessments and rendering diagnoses of ADHD must be qualified to do so.

- Comprehensive training in the differential diagnosis of ADHD and other psychiatric disorders and direct experience in diagnosis and treatment of adults is necessary. The evaluator's name, title and professional credentials, including information about license or certification as well as the area of specialization, employment and state in which the individual practices should be clearly stated in the documentation.
- B. Testing/assessment must be current. The determination of whether an individual is "significantly limited" in functioning is based on assessment of the current impact of the impairment on the bar examination testing program.
 - C. Documentation necessary to substantiate the Attention Deficit/Hyperactivity Disorder must be comprehensive. Objective, relevant, historical information is essential. Information verifying a chronic course of ADHD symptoms from childhood through adolescence to adulthood, such as educational transcripts, report cards, teacher comments, tutoring evaluations, job assessments and the like are necessary.
 - D. The evaluator is expected to review and discuss DSM-V diagnostic criteria for ADHD and describe the extent to which the patient meets these criteria. The report must include information about the specific symptoms exhibited and document that the patient meets criteria for longstanding history, impairment and pervasiveness.
 - E. A history of the individual's presenting symptoms must be provided, including evidence of ongoing impulsive/hyperactive or inattentive behaviors (as specified in DSM-V) that significantly impair functioning in two or more settings.
 - F. The information collected by the evaluator must consist of more than self-report. Information from third-party sources is critical in the diagnosis of adult ADHD. Information gathered in the diagnostic interview and reported in the evaluation should include, but not necessarily be limited to, the following:
 - 1. History of presenting attention symptoms, including evidence of ongoing impulsive/hyperactive or inattentive behavior that has significantly impaired functioning over time.
 - 2. Developmental history.
 - 3. Family history for presence of ADHD and other educational, learning, physical or psychological difficulties deemed relevant by the examiner;
 - 4. Relevant medical and medication history, including the absence of a medical basis for the symptoms being evaluated.
 - 5. Relevant psychosocial history and any relevant interventions.
 - 6. A thorough academic history of elementary, secondary and postsecondary education.
 - 7. Review of psychoeducational test reports to determine if a pattern of strengths or weaknesses is supportive of attention or learning problems.
 - 8. Evidence of impairment in several life settings (home, school, work, etc.) and evidence that the disorder significantly restricts one or more major life activities.
 - 9. Relevant employment history.
 - 10. Description of current functional limitations relative to an educational setting and to the bar exam in particular that are presumably a direct result of the described problems with attention.
 - 11. A discussion of the differential diagnosis, including alternative or co-existing mood, behavioral, neurological and/or personality disorders that may confound the diagnosis of ADHD.

12. Exploration of possible alternative diagnoses that may mimic ADHD.
- G. Relevant assessment batteries. A neuropsychological or psychoeducational assessment may be necessary in order to determine the individual's pattern of strengths or weaknesses and to determine whether there are patterns supportive of attention problems. Test scores or subtest scores alone should not be used as the sole basis for the diagnostic decision. Scores from subtests on the Wechsler Adult Intelligence Scale-III (WAIS-III), memory functions tests, attention or tracking tests or continuous performance tests do not in and of themselves establish the presence or absence of ADHD. They may, however, be useful as one part of the process in developing clinical hypotheses. Checklists and/or surveys can serve to supplement the testing is used, standard scores must be provided for all normed measures.
- H. Identification of the current DSM Criteria. A diagnostic report must include a review of the most current edition of the DSM criteria for ADHD both currently and retrospectively and specify which symptoms are present.
- I. Documentation must include a specific diagnosis. The report must include a specific diagnosis of ADHD based on the current DSM diagnostic criteria. Individuals who report problems with organization, test anxiety, memory and concentration only on a situational basis do not fit the prescribed diagnostic criteria for ADHD. Given that many individuals benefit from prescribed medications and therapies, a positive response to medication by itself is not supportive of a diagnosis, nor does the use of medication in and of itself either support or negate the need for accommodation.
- J. A clinical summary must be provided. A well-written diagnostic summary based on a comprehensive evaluative process is a necessary component of the assessment. The clinical summary must include:
1. Demonstration of the evaluator's having ruled out alternative explanations for inattentiveness, impulsivity, and/or hyperactivity as a result of psychological or medical disorders or noncognitive factors.
 2. Indication of how patterns of inattentiveness, impulsivity and/or hyperactivity across the life span and across settings are used to determine the presence of ADHD.
 3. Indication of the substantial limitation to learning presented by ADHD and the degree to which it impacts the individual in the context for which accommodations are being requested (e.g., impact on the bar exam).
 4. Indication as to why specific accommodations are needed and how the effects of ADHD symptoms, as designated by the current DSM, are mediated by the accommodation(s).
- K. Each accommodation recommended by the evaluator must include a rationale. The evaluator must describe the impact of ADHD (if one exists) on a specific major life activity as well as the degree of significance of this impact on the individual. The diagnostic report must include specific recommendations for accommodations. A detailed explanation must be provided as to why each accommodation is recommended and should be correlated with specific identified functional limitations. Prior documentation may have been useful in determining appropriate services in the past. However, documentation should validate the need for accommodations based on the individual's current level of functioning. The documentation should include any record of prior accommodation or auxiliary aid, including information about specific conditions under which the accommodation was used (e.g., standardized testing, final exams, subject exams, etc.) However, a prior history of accommodation without demonstration of a current need does

not in and of itself warrant the provision of a similar accommodation. If no prior accommodation has been provided, the qualified professional and/or individual being evaluated should include a detailed explanation as to why no accommodation was used in the past and why accommodation is needed at this time.

Because of the challenge of distinguishing ADHD from normal developmental patterns and behaviors of adults, including procrastination, disorganization, distractibility, restlessness, boredom, academic underachievement or failure, low self-esteem and chronic tardiness or inattentance, a multifaceted evaluation must address the intensity and frequency of the symptoms and whether these behaviors constitute an impairment in a major life activity.

3(A)(1). *Day of Multistate Bar Examination*

The multistate bar examination is administered on the last Wednesday of February and July.

3(A)(2). *Day of Essay Examination*

The essay portion of the examination is administered on the Tuesday immediately preceding the last Wednesday of February and July and consists of 15 questions.

3(B). *Examination Scoring*

Each essay question has 10 possible points for a total of 150 possible points. After reading and considering each answer, the grader shall assign a score consistent with the following standards:

A. Score of 9-10

A Score of 9-10 demonstrates a **high degree of competence** in response to the question. While not reserved for a perfect answer, a 9-10 answer demonstrates a full understanding of the facts, a complete recognition of the issues presented and the applicable principles of law, and a good ability to reason to a conclusion. A 9-10 answer is clear, concise and complete. A score of 9 or 10 is not reserved for a perfect or near perfect answer. A score of 10 is not reserved for the single “best” answer that a grader may encounter to a particular question or on a particular examination. A grade of 10 may be assigned if the grader believes that the applicant has done an exceptional job considering the time and circumstances.

B. Score of 8

A score of 8 demonstrates **clear competence** in response to the question. An 8 answer demonstrates a fairly complete understanding of the facts, recognizes more of the issues and applicable law, and reasons fairly well to a conclusion.

C. Score of 7

A score of 7 demonstrates **competence** in response to the question. A 7 answer demonstrates an adequate understanding of the facts, an adequate recognition of most of the issues and law, and adequate ability to reason to a conclusion.

D. Score of 5-6

A score of 5-6 demonstrates **some competence** in response to the question but is inadequate. A 5-6 answer demonstrates a weak understanding of the facts, misses

significant issues, fails to recognize applicable law, and demonstrates inadequate reasoning ability.

E. Score of 4

A score of 4 demonstrates only **limited competence** in response to the question and is seriously flawed. A 4 answer demonstrates little understanding of the facts or law and little ability to reason to a conclusion.

F. Score of 1-3

A score of 1-3 demonstrates **fundamental deficiencies** in understanding facts and law. A 1-3 answer shows virtually no ability to reason or analyze.

G. A Score of 0

A score of zero should be assigned only when the applicant makes no attempt to answer the question, or when the answer shows no reasonable attempt to identify or address the issues raised by the question.

There are 200 possible points on the multistate portion of the exam. A combined score of 135 or above is necessary to pass the exam using the following formula:

$$\text{Combined score} = [\text{scaled essay score} + \text{MBE score}] / 2$$

where the scaled essay score is the score resulting from the linking of the raw essay score to the MBE scale using linear equating methods (sometimes referred to as “scaling”) adjusted for the relative difficulty of the two portions of the bar exam as measured by the difference in the mean scores on the MBE scale for each portion of the exam averaged over six exam administrations.

A passing score is valid for three years. Applicants not becoming active members of the State Bar of Michigan within that time must retake and pass the examination.

Rule 4. Post-Examination Procedures

- (A) The Executive Director will release examination results at the Board’s direction. Blue books, or ExamSoft laptop answers, will be kept for 3 months after results are released.
- (B) Within 30 days after the day the results are released, the applicant may ask the Board to reconsider the applicant’s essay grades. The applicant shall file with the Executive Director two (2) copies of:
 - (1) the request;
 - (2) the answer given in the applicant’s blue books, or ExamSoft; and
 - (3) an explanation why the applicant deserves a higher grade.
- (C) An applicant for re-examination may obtain an application from the Executive Director. The application must be filed at least sixty (60) days before the examination. If the applicant’s clearance is more than three (3) years old, the applicant must be approved by the State Bar Committee on Character and Fitness.

Policy Statements

4(A)-1. *Release of Results*

Results are released by first-class mail and are posted by the applicant's seat number on the BLE website. No telephone or other requests for results are honored. Applicants with character and fitness, MPRE, and law school certification receive official results. For those who passed the examination, official results include the Board's certification and information about how to apply for membership in the State Bar of Michigan. The Board's certification is valid for three years. For those who failed the examination, official results include an application for re-examination. Applicants missing character and fitness or MPRE clearance receive unofficial results and are eligible to participate in the appeal process. Applicants not having law school certification do not receive any results until certification is received. After a suitable time allowing for a reasonable opportunity for notification of applicants by mail, a list of certified passers is posted on the Board's website. Applicants must wait ten business days for the delivery of results. Applicants not receiving results after the ten-day period, must submit a written request to the Board of Law Examiners to receive a duplicate result packet. The request must include a statement that the applicant did not receive the original result packet, a statement promising to return the original result packet if received, and the applicant's full name, current address, and month and year he or she sat for the examination.

4(A)-2. *Copies of Bluebooks or ExamSoft laptop answers*

Applicants failing the exam may request copies of their bluebooks or ExamSoft laptop answers. Requests must be made in writing and be accompanied by \$20 (money order or certified funds). Bluebooks are destroyed three months after results are released. ExamSoft answers are not available from the Board after three months of the release of results.

4(B). *Appeals*

Appeals must be postmarked by the date stated in the material received by applicants failing the exam. That date is 30 days from the date results are released, except when the due date would fall on a Sunday or other Court holiday. No exceptions are made to that deadline, although applicants who did not receive results because of a delay in the Board's receipt of law school certification are given 30 days from the date of the release of his or her examination results. The requirements listed in the appeal instructions are strictly enforced. Appeals not meeting those requirements are rejected. Essay answers are not re-read or otherwise regraded following an appeal. Any further review must be by complaint for superintending control filed in the Supreme Court.

4(C). *Applications for Re-examination*

Applications for re-examination are sent to those applicants who fail the exam along with their official results. Applicants receiving unofficial results do not receive an application for re-examination until official results are released. Character and fitness clearance is valid for three years. The three-year period begins with the exam first applied for by the applicant, regardless of when clearance is obtained and whether the applicant actually sat for that examination. For example, an applicant applying for the February 2005 examination and receiving character and fitness clearance, would need to be re-approved before being allowed to sit for the February 2008 examination. Applicants not passing the examination within three years after receiving clearance

must again be approved by the State Bar Standing Committee on Character and Fitness.

Rule 5. Admission Without Examination

- (A) An applicant for admission without examination must
- (1) qualify under Rules 1 and 2(B);
 - (2) be licensed to practice law in the United States, its territories, or the District of Columbia;
 - (3) be a member in good standing of the Bar where admitted;
 - (4) intend to practice law in Michigan, or to be a full-time instructor in a reputable and qualified Michigan law school; and
 - (5) have, after being licensed and for 3 of the 5 years preceding the application,
 - (a) actively practiced law as a principal business or occupation in a jurisdiction where admitted (the practice of law under a special certificate pursuant to Rule 5[D] or as a special legal consultant pursuant to Rule 5[E] does not qualify as the practice of law required by this rule);
 - (b) been employed as a full-time instructor in a reputable and qualified law school in the United States, its districts, or its territories; or
 - (c) been on active duty (other than for training or reserve duty) in the United States armed forces as a judge advocate, legal specialist, or legal officer. The judge advocate general (or a comparable officer) or delegate must certify the assignment and the inclusive dates.
- The Supreme Court may, for good cause, increase the 5-year period. Active duty in the United States armed forces not satisfying Rule 5(A)(5)(c) may be excluded when computing the 5-year period.
- (B) An applicant must submit the National Conference of Bar Examiners' Request for Preparation of a Character Report along with other material required by the Board and payment of the fees.
- (C) An applicant not satisfying Rule 5(A) will be notified and given an opportunity to appear before the Board. The applicant may use the Board's subpoena power.
- (D) An attorney
- (1) ineligible for admission without examination because of the inability to satisfy Rule 5(A)(5); and
 - (2) practicing law in an institutional setting, e.g., counsel to a corporation or instructor in a law school, may apply to the Board for a special certificate of qualification to practice law. The applicant must satisfy Rule 5(A)(1)-(3), and comply with Rule 5(B). The Board may then issue the special certificate, which will entitle the attorney to continue current employment if the attorney becomes an active member of the State Bar. If the attorney leaves the current employment, the

special certificate automatically expires; if the attorney's new employment is also institutional, the attorney may reapply for another special certificate.

(E) Special Legal Consultants

- (a) To qualify for admission without examination to practice as a special legal consultant one must
 - (1) be admitted to practice in a foreign country and have actually practiced, and be in good standing, as an attorney or counselor at law or the equivalent in such foreign country for at least 3 of the 5 years immediately preceding the application; and
 - (2) possess the good moral character and general fitness requisite for a member of the bar of this state; and
 - (3) Fulfill the requirements of MCL 600.934 and 600.937; and
 - (4) Be a resident of this or another state of the United States, its territories or the District of Columbia and maintain an office in this state for the practice of law; and
 - (5) Be over 18 years of age.
- (b) In considering whether to license an applicant to practice pursuant to Rule 5(E), the Board may in its discretion take into account whether a member of the bar of this state would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission (as referred to in Rule 5[E][a][1]), if there is pending with the Board a request to take this factor into account from a member of the bar of this state actively seeking to establish such an office in that country which raises a serious question as to the adequacy of the opportunity for such a member to establish such an office.
- (c) An applicant for a license as a special legal consultant shall submit to the Board:
 - (1) A certificate from the authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof and as to the good standing of such attorney or counselor at law or the equivalent, together with a duly authenticated English translation of such certificate if it is not in English;
 - (2) A letter of recommendation from one of the judges of the highest law court or intermediate appellate court of such foreign country, together with a duly authenticated English translation of such letter if it is not in English;
 - (3) The National Conference of Bar Examiners questionnaire and affidavit along with the payment of the requisite fee and such other evidence of the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Rule 5(E)(a)(1)-(5) as the Board may require; and
 - (4) Shall execute and file with the Executive Director of the State Board of

Law Examiners, in such form and manner as the Board may prescribe:

- (i) A duly acknowledged instrument in writing setting forth the special legal consultant's address in the state of Michigan and designating the Executive Director of the State Board of Law Examiners an agent upon whom process may be served, with like effect as if served personally upon the special legal consultant, in any action or proceeding thereafter brought against the special legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the special legal consultant within or to residents of the state of Michigan whenever after due diligence service cannot be made upon the special legal consultant at such address or at such new address in the state of Michigan as the special legal consultant shall have filed in the office of the Executive Director of the State Board of Law Examiners by means of a duly acknowledged supplemental instrument in writing; and
 - (ii) The special legal consultant's commitment to notify the Executive Director of the State Board of Law Examiners of any resignation or revocation of the special legal consultant's admission to practice in the foreign country of admission, or of any censure, suspension or expulsion in respect of such admission. Service of process on the Executive Director of the State Board of Law Examiners shall be made by personally delivering to and leaving with the Executive Director, or with a deputy or assistant authorized by the Executive Director to receive such service, at the Executive Director's office, duplicate copies of such process together with a fee of \$10.00. Service of process shall be complete when the Executive Director has been so served. The Executive Director shall promptly send one of such copies to the special legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such special legal consultant at the address specified by the special legal consultant as aforesaid.
- (d) A person licensed to practice as a special legal consultant must maintain active membership in the State Bar of Michigan and must discharge the responsibilities of state bar membership and is authorized to render professional legal advice:
- (1) On the law of the foreign country where the legal consultant is admitted to practice.
 - (2) May use the title 'special legal consultant' either singly or in connection with the authorized title or firm name in the foreign country of the legal consultant's admission to practice, provided that in each case the name of such foreign country be identified.

Policy Statements

5. Review of Applications for Admission without Examination

Applications for admission without examination are initially reviewed by the Executive Director to determine if the materials facially meet the requirements of the Rule. If they do not,

the materials are returned with an opportunity given for supplementation or explanation. Applicants not meeting the requirements of the Rule may seek a waiver of a particular provision for good cause. Good cause must be shown by clear and convincing evidence. In those situations, the issue is presented to the Board before the NCBE process begins and the applicant's funds are retained until the Board rules. Once the NCBE process begins, all funds become nonrefundable.

Applications facially meeting the requirements of the Rule are sent to the National Conference of Bar Examiners for preparation of a character report. If no irregularities are disclosed, the Executive Director approves the application and the applicant is sent the Board's certification. The certification is valid for three years.

5(A)(1)-1. *Good Moral Character*

An applicant for admission without examination must be of good moral character. The Board may refer an applicant to the State Bar of Michigan's Standing Committee on Character and Fitness for a report before granting the application. The applicant is responsible for any fees assessed by the Standing Committee. An applicant may file an application while there is a grievance pending against him or her, but the Board will not approve the application until any pending grievances are resolved. Favorable resolution of any grievance does not bar the Board from referring the applicant to the Standing Committee.

5(A)(1)-2. *Reputable and Qualified Law School*

An applicant for admission without examination must be a graduate of a law school deemed reputable and qualified at the time the applicant's degree was conferred. Applicants seeking a waiver of this requirement must supply the same material required of those applicants seeking to take the bar examination who do not have a qualifying JD.

5(A)(2). *Licensure in Another Jurisdiction*

Licensure status is confirmed by the National Conference of Bar Examiners.

5(A)(3). *Member in Good Standing*

Good standing status is confirmed by the National Conference of Bar Examiners.

5(A)(4). *Intention to Practice in Michigan*

The applicant must state that he or she intends to practice law in Michigan or be a full-time instructor in a reputable and qualified law school in Michigan. The quantity of practice in Michigan is not set.

5(A)(5). *Duration of Practice in Another Jurisdiction*

Individuals must have practiced law for three of the five years preceding the application. For good cause, the Board may increase the five-year period.

5(A)(5)(a)-1. *Practice of Law*

To constitute a principal business or occupation, the practice of law in the other jurisdiction must have been greater than 50% of the applicant's time. The practice of law is defined as counseling or assisting another in matters that require the use of legal discretion and profound legal knowledge.

5(A)(5)(a)-2. *Jurisdiction Where Admitted*

The practice must have been in a U.S. jurisdiction where admitted. Practice in the federal courts in a state other than where admitted qualifies.

5(A)(5)(a)-3. *Judicial Clerks*

Employment as a judicial clerk will be considered the practice of law. For purposes of the requirement of Rule 5 that the practice of law must have been in a jurisdiction where admitted, in the case of federal judicial clerks, admission to a state bar will not be required. In the case of all other judicial clerks, the only time included in the determination of whether the applicant meets the three-years-in-five requirement will be the period of employment after licensure in that jurisdiction, i.e. the length of time the applicant practiced law in a jurisdiction where admitted.

5(A)(5)(a)-4. *Agency Practice*

Practice before an agency or tribunal that does not require law licensure does not satisfy the practice requirement.

5(B). *Fees*

Applications for admission without examination must be accompanied by a money order, cashier's check, or certified check in the amount of \$600 made payable to the "State of Michigan" and a money order, cashier's check, or certified check in the amount of \$450 made payable to the "National Conference of Bar Examiners." Once the application materials are sent to the National Conference of Bar Examiners, all funds are nonrefundable.

5(C). *Hearing*

A request for a hearing must be made in writing within 60 days of the letter notifying the applicant of that option. Waivers of the provisions of Rule 5(A) are for good cause only, which must be shown by clear and convincing evidence.

5(D). *Special Certificates*

Only one special certificate is issued at a time. A special certificate automatically expires when the current employment is terminated. If an attorney's new employment is also institutional, another special certificate will be issued upon receipt of proof of that employment.

Rule 6. Fees

The fees are: an application for examination, \$340 and an additional fee for the late filing of an application or transfer of an application for examination, \$100; an application for reexamination, \$240; an application for recertification, \$200; an application for admission without examination, \$600 plus the requisite fee for the National Conference of Bar Examiners' report. Money orders or cashier's checks must be payable to the State of Michigan.

Policy Statement

6. *Manner of Payment*

Unless otherwise noted, funds must be paid by money order, cashier's check or certified check.

Rule 7. Exceptions

An applicant may ask the Board to waive any requirement except the payment of fees. The applicant must demonstrate why the request should be granted.

Policy Statement

7. *Waivers of Rules.*

Waivers are granted for good cause only, which must be demonstrated by clear and convincing evidence. Carelessness, inattention, or willful disregard of the Board's processes does not constitute good cause. No motions for rehearing or reconsideration of Board decisions on requests for waivers will be accepted. Review is by complaint for superintending control filed in the Supreme Court. The Board does not issue advisory decisions.

Rule 8. Recertification

An applicant for recertification shall file an application and other material required by the Board. After a hearing the Board shall either recertify the applicant or require that the applicant pass the examination described in Rule 3. An applicant may use the Board's subpoena power for the hearing. An applicant who is an inactive State Bar member or who had previously voluntarily resigned from the State Bar or who previously elected emeritus status, and who has been employed in another jurisdiction in one of the ways listed in Rule 5(A)(5) is entitled to recertification by the Board.

Policy Statements

8-1. *Recertification*

Rule 3 of the Rules Concerning the State Bar of Michigan requires persons who have been on inactive status for three years or more to be recertified by the Board before the person can be reclassified as an active member of the State Bar. Such a person must demonstrate that he or she possesses sufficient ability and learning in the law to enable the member to properly practice as an attorney and counselor in Michigan. Persons not meeting that standard must take and pass the bar examination in order to be recertified. Applications for recertification can be obtained from the Board's website. The fee is \$200, payable by money order, certified check, or cashier's check.

8-2. *Inactive Members of the State Bar*

An applicant for recertification who is an inactive State Bar of Michigan member and who has been employed in another jurisdiction in one of the ways listed in Rule 5(A)(5) will be recertified. Inactive members who have not been employed in another jurisdiction in one of the ways listed in Rule 5(A)(5) must demonstrate that they possess sufficient ability and learning in the law to enable the member to properly practice as an attorney and counselor in Michigan. The State Bar determines the amount of back dues that are required to be paid before readmission.

8-3. *Resigned or Emeritus Members of the State Bar*

An applicant for recertification who voluntarily resigned from the State Bar of Michigan or who

voluntarily elected emeritus status, and who has been employed in another jurisdiction in one of the ways listed in Rule 5(A)(5) will be recertified. Such an applicant for recertification who does not meet the requirements of Rule 5(A)(5) must take and pass the bar examination.

8-4. Hearings

A hearing before the Board is only available if the Board initially denies the request for recertification based on the application and material submitted.

8-5. Character and Fitness

In cases where the applicant's license was suspended or revoked and has been reinstated subject to being recertified, the Board relies on the finding of the Attorney Discipline Board and does not inquire into the applicant's character and fitness, unless that finding is more than three years old. In that situation, the applicant is referred to the State Bar for a character and fitness determination. The applicant is allowed to take the bar examination while that review is being conducted. The Board does not consider applications for recertification before the Attorney Discipline Board has determined the individual is eligible for reinstatement. An applicant may file an application while there is a grievance pending against him or her in another jurisdiction, but the Board will not approve the application until any pending grievances are resolved. Favorable resolution of any such grievance does not bar the Board from referring the applicant to the State Bar.

Statutes

MCL 600.922 Board of law examiners; membership, vacancies, officers.

"There is hereby constituted a board of law examiners consisting of 5 active members of the bar each of whom shall hold office for 5 years and 1 of whom shall be appointed by the governor on nomination by the supreme court on the first day of July in each year. Vacancies on the board shall be filled in like manner for the unexpired term. The president of the board is the member of the board whose term first expires. The board shall elect a secretary annually from its own membership. The clerk of the supreme court *ex-officio* is the assistant secretary and treasurer of the board. If a vacancy occurs in the office of president, the board may elect a president for the unexpired term from its own membership."

Policy Statement

922-1. Executive Director and Assistant Secretary as Legal Counsel

The Executive Director and Assistant Secretary serve as in-house legal counsel and provide legal advice to the Board, perform legal research and summarize past practices of the Board. In his or her role as legal counsel, the Executive Director and Assistant Secretary make recommendations on agenda items. The Board considers all of its communications with the Executive Director and Assistant Secretary to be attorney-client communications and therefore privileged.

MCL 600.925 Board of law examiners; applicants for admission; rules and regulations.

"The board of law examiners has charge of the investigation and examination of all persons who

initially apply for admission to the bar of this state. The board may adopt suitable regulations, subject to approval by the supreme court, concerning the performance of its functions and duties. Regulations adopted pursuant to this section need not be published pursuant to Act No. 88 of the Public Acts of 1943, being sections 24.71 to 24.82, inclusive, of the Compiled Laws of 1948, as amended. The board has the power of subpoena, and the authority to administer oaths, and to take testimony under oath, which may be exercised by any member of the board in cases of applicants for admission to the bar.”

Policy Statements

925-1. *Communications with Board Members by Applicants and/or Their Representatives*

The members of the Board of Law Examiners serve as fact-finders and otherwise act as the final authority on numerous issues relating to applicants for admission to the bar. It acts as a body and therefore communication of any type with board members by an applicant or an applicant’s representative (legal or otherwise) relating to the applicant is not appropriate. Questions regarding the status of a matter, procedure, or other issue should be directed to the Executive Director. Members of the Board will not respond to communications except to refer the person to the Executive Director.

925-2. *Disqualification of Board Members*

When an issue of a board member’s disqualification is raised, either by motion or otherwise, the issue will be addressed using the provisions of MCR 2.003, relating to Supreme Court justices, as a guide.

925-3. *Motions and Subpoenas*

While the Board has subpoena power, it is not within its power to adjudicate discovery motions based on alleged noncompliance with those subpoenas. Applicants must seek judicial relief to enforce a subpoena. The Board does not entertain motions for summary disposition.

MCL 600.928 Board of law examiners; meetings, quorum.

“The board of law examiners shall meet at least once in each year at such times and places as the chairman shall determine for the purpose of investigating, examining, hearing, and passing upon the qualifications of applicants for admission to the bar, and to transact such other business as may come before the board. Three members of the board shall constitute a quorum. The action of a majority of the members present at a meeting at which a quorum is present shall be the action of the board.”

Policy Statements

928-1. *Board Meetings*

Board meetings are not open to the public.

928-2. *Meeting Agenda*

Due to the requirements of applicant confidentiality and because the agendas contain the Executive Director’s and/or Assistant Secretary’s recommendations as in-house counsel, agendas

are privileged, not matters of public record, and not available for inspection.

928-3. *Minutes of Meetings*

The minutes of each meeting shall be prepared by the Executive Director and are to be approved at the next meeting. Board minutes contain privileged and otherwise confidential information and are not open to the public and are not available for inspection.

928-4. *Board Hearings*

The Board hears all matters de novo. The Michigan Rules of Evidence are not binding during hearings, and any rulings made by the Board before or during a hearing are final. At the discretion of the Board, a pre-hearing conference will be held between the Board's Executive Director, State Bar counsel and the applicant or his/her counsel to determine the issues for the hearing.

MCL 600.931 Fees for admission to bar; compensation and expenses of board of law examiners.

- A. The fees required to be paid by each applicant for admission to the bar shall be paid to the board of law examiners, and shall be deposited in the general fund for the restricted purpose of expenditures of the supreme court related to the administration of the board of law examiners.
- B. Subject to subsection (3), the fees described in this section are as follows:
 - 1. The fee for applying for examination is \$175.00 for an examination occurring before January 1, 2001, or \$300.00 for an examination occurring after January 1, 2001.
 - 2. The fee for applying for reexamination or recertification is \$100.00 for a reexamination or recertification occurring before January 1, 2001, or \$200.00 for a reexamination or recertification occurring after January 1, 2001.
 - 3. The fee for admission without examination is \$400.00 for an admission without examination before January 1, 2001, or \$600.00 for an admission without examination after January 1, 2001.
 - 4. The additional fee for late filing of application or transfer of an application is \$100.00.
- C. The supreme court, by administrative order or rule, may increase the amounts prescribed in subsection (2)(a), (b), or (c) within the following limits:
 - 1. The fee for applying for an examination occurring after January 1, 2002 may be increased to not more than \$400.00.
 - 2. The fee for applying for a reexamination or recertification occurring after January 1, 2002 may be increased to not more than \$300.00.
 - 3. The fee for admission without examination after January 1, 2002 may be increased to not more than \$800.00.
- D. Each member of the board is entitled to receive compensation for his or her services, as are authorized by the supreme court and appropriated by the legislature, and in addition the actual and necessary expenses incurred in the discharge of his or her duties as a member of the board. The expenses of the board shall be paid upon certification by the

supreme court pursuant to the procedures established by the supreme court.

Policy Statement

931-1. Fees

Fees for first time bar examination applicants must be paid online through a credit card as part of the application process. All other fees must be paid by money order, cashier's check or certified check payable to the State of Michigan.

MCL 600.934 Qualifications for admission to bar; "good moral character" defined; election to use multi-state bar examination scaled score; disclosure of score.

- A. A person is qualified for admission to the bar of this state who proves to the satisfaction of the board of law examiners that he or she is a person of good moral character, is 18 years of age or older, has the required general education, learning in the law, and fitness and ability to enable him or her to practice law in the courts of record of this state, and that he or she intends in good faith to practice or teach law in this state. Additional requirements concerning the qualifications for admission are contained in subsequent sections of this chapter. As used in this subsection, "good moral character" means good moral character as defined and determined under 1974 PA 381, MCL 338.41 to 338.47.
- B. A person may elect to use the multi-state bar examination scaled score that the person achieved on a multi-state bar examination administered in another state or territory when applying for admission to the bar of this state, but only if all of the following occur:
 - 1. The score that the person elects to use was achieved on a multi-state examination administered within the 3 years immediately preceding the multi-state bar examination in this state for which the person would otherwise sit.
 - 2. The person achieved a passing grade on the bar examination of which the multi-state examination the score of which the person elects to use was a part.
 - 3. The multi-state examination the score of which the person elects to use was administered in a state or territory that accords the reciprocal right to elect to use the score achieved on the multi-state examination administered in this state to Michigan residents seeking admission to the bar of that state or territory.
 - 4. The person earns a grade on the essay portion of the bar examination that when combined with the transferred multi-state scaled score constitutes a passing grade for that bar examination.
 - 5. The person otherwise meets all requirements for admission to the bar of this state.
- C. The state board of law examiners shall disclose to a person electing under subsection (2) to transfer the multi-state bar examination scaled score achieved on an examination administered in another state or territory the score the person achieved as soon as that score is received by the board regardless of whether the person could have obtained that score in the jurisdiction in which the examination was administered. This subsection does not require disclosure by the board of the score achieved on a multi-state bar examination

administered in another state or territory until the scores achieved on that examination administered in Michigan are released.

Policy Statements

934-1. *Good Moral Character*

See BLE Rules 1 and 2.

934-2. *Transfer of Multistate Bar Examination Score*

In some situations, applicants are allowed to transfer a scaled score from a multistate bar examination administered in another jurisdiction.

- a. That exam must have been taken within three years immediately preceding the exam the applicant wants to transfer the score to.
- b. The applicant must have passed the exam of which the MBE score the applicant seeks to transfer was a part.
- c. The jurisdiction from which the score is to be transferred must accept a Michigan MBE score for persons seeking admission to the bar of that jurisdiction. The other jurisdiction does not need to accept Michigan scores in every situation that Michigan accepts its scores, although if the other jurisdiction only accepts scores from concurrent examinations, Michigan will accept scores from that jurisdiction only from concurrent examinations.
- d. The essay answers of an applicant are graded and the combined score must constitute a passing score, regardless of the MBE transferred score.

934-3. *Timing of Request for Transfer*

Applicants are responsible for having information from another jurisdiction certified to the Board of Law Examiners. Applicants must notify the Board by mail—faxes and emails are not accepted—no later than May 15 for the July examination and December 15 for the February examination. This written notice of intent to transfer an MBE score is a necessary precondition to perfect the right to transfer an MBE score to Michigan.

MCL 600.937 General education requirements.

“Every applicant for admission to the bar is required to have completed successfully prior to commencement of his legal education at least 2 years of study, consisting of not less than 60 “semester hours” or 90 “quarter hours” of study in courses for which credit towards a collegiate degree is given, either in an accredited college authorized under the laws of the state in which the college is located to grant collegiate degrees, or in a junior college or other school from which students who have successfully completed such 2 years of study are accepted as regular third-year students by any accredited college in this state that is authorized by law to grant collegiate degrees.”

Policy Statement

937-1. *General Education Requirements*

See BLE Rule 1.

MCL 600.940 Legal education requirements; military service.

- a. Every applicant for examination is required to be a graduate from a reputable and qualified law school duly incorporated under the laws of this state or another state or territory, or the District of Columbia, of the United States of America.
- b. If an applicant is called into or volunteers for the armed forces of the United States of America, and has completed successfully 2 1/2 years of the course of study as a full-time student, or 3 1/2 years of the course of study as a part-time student, in any such law school, the board of law examiners, in its discretion may allow such applicant to be examined for the bar prior to such graduation, but shall withhold certification until after his graduation.

Policy Statement

940-1. *Reputable and Qualified Law Schools*

See BLE Rule 2.

MCL 600.943 Examination of schools and colleges.

“The board of law examiners has the authority to examine, or to cause to be examined, any school, college, junior college, or law school for the purpose of determining whether the standards of education and training required for admission to the bar are being maintained, and to exclude from the bar examination any person who was a student therein at the time any such educational institution is found to have been disqualified or of questionable reputation. The board of law examiners may exclude from the bar examination any person who was a student in any such educational institution if such educational institution refuses to allow the examination.”

MCL 600.946 Foreign attorneys; admission to bar, qualifications, extension of term.

“Any person who is duly licensed to practice law in the court of last resort of any other state or territory or the District of Columbia, of the United States of America, and who applies for admission to the bar of this state without examination, is required to prove to the satisfaction of the board of law examiners that:

- a. He is in good standing at the bar of such other state, territory, or district, and has the qualifications as to moral character, citizenship, age, general education, fitness and ability required for admission to the bar of this state;
- b. He intends in good faith either to maintain an office in this state for the practice of law, and to practice actively in this state, or to engage in the teaching of law as a full-time instructor in a reputable and qualified law school duly incorporated under the laws of this state; and
- c. His principal business or occupation for at least 3 of the 5 years immediately preceding his application has been either the active practice of law in such other state, territory, or district or the teaching of law as a full-time instructor in a reputable and qualified law school duly incorporated under the laws of this or some other state

or territory, or the District of Columbia, of the United States of America, or that period of active service, full-time as distinguished from active duty for training and reserve duty, in the armed forces of the United States, during which the applicant was assigned to and discharged the duties of a judge advocate, legal specialist or legal officer by any other designation, shall be considered as the practice of law for the purposes of this section, which assignment and the inclusive dates thereof shall be certified to by the judge advocate general or comparable officer of the armed forces concerned or by the principal assistant to whom this certification may be delegated; or any combination of periods of practice thereof. The supreme court may, in its discretion, on special motion and for good cause shown, increase said 5-year period. Any period of active service in the armed forces of the United States not meeting the requirements of duty in the armed forces as herein stated may be excluded from the 5-year period above prescribed and the period extended accordingly.”

Policy Statement

946-1. *Admission Without Examination*

An applicant for admission without examination who has previously failed the Michigan bar examination will be referred to the Board by the Executive Director before the application is processed through the National Conference of Bar Examiners. Having failed the bar examination is not an automatic bar to admission without examination. See BLE Rule 5.